STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA LAWSON,

Plaintiff-Appellee

v

CITY OF NILES,

Defendant-Appellant.

UNPUBLISHED
January 8, 2009

No. 280797
Berrien Circuit Court
LC No. 2007-000112-NO

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she tripped and fell due to an alleged defect in a public sidewalk located within defendant's jurisdiction. She filed this action, alleging negligence in the maintenance of the sidewalk, invoking the highway exception to governmental immunity. MCL 691.1402. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), alleging that it was immune from lawsuit based on governmental immunity because plaintiff failed to comply with the notice requirements of MCL 691.1404(1). The trial court denied defendant's motion.

We review de novo a motion for summary disposition under MCR 2.116(C)(7). *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 386; 738 NW2d 664 (2007). We accept as true the contents of the complaint unless contradicted by documentation submitted by the movant, and consider all admissible affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(5); *Pusakulich v Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). Issues of statutory interpretation are also reviewed de novo. *Id.* When construing a statute, our primary goal is to give effect to the intent of the Legislature by construing the language of the statute itself. *Id.* When the language is unambiguous, we afford the words their plain meaning and apply the statute as written. *In re MCI Telecom Complaint*, 460 Mich 396, 411, 596 NW2d 164 (1999).

The governmental immunity act, MCL 691.1401 *et seq.*, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. MCL 691.1407(1). The highway exception to governmental immunity, MCL 691.1402(1), requires a governmental agency to maintain a highway under its jurisdiction in

reasonable repair so that it is reasonably safe and convenient for public travel. The definition of "highway" includes sidewalks. MCL 691.1401(e).

To bring a claim under the highway exception, a plaintiff must first provide notice in accordance with MCL 691.1404(1), which provides in relevant part:

> As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, ... shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

In other words, to be sufficient under MCL 691.1404(1), notice must include four components: (1) the exact location of the defect; (2) the exact nature of the defect; (3) the injury sustained; and (4) any witnesses known at the time of the notice. *Rowland v Washtenaw Co Rd Comm*, 477 Mich. 197, 250 (Kelly, J. concurring in part and dissenting in part); 731 NW2d 41 (2007).

In *Rowland, supra*, our Supreme Court recently analyzed the 120-day notice requirement of the notice statute and held that the language of MCL 691.1404 "is straightforward, clear, unambiguous . . .and must be enforced as written," *id.* at 219, and that previous cases requiring a showing of prejudice before the notice provision could be enforced, were wrongly decided. The *Rowland* Court gave its decision full retroactive effect. *Id.* at 223.

Defendant argues that based on the *Rowland* decision, plaintiff's claims should have been dismissed for failure to comply with the plain language of the notice statute because plaintiff's notice did not specify the exact location and nature of the defect.[1]

However, it has long been the case in Michigan that "notice," particularly where demanded of an average citizen for the benefit of a governmental entity, need only be understandable and sufficient to bring to the defendant's attention the important facts. *Brown v City of Owosso*, 126 Mich 91, 94-95; 85 NW 256 (1901). Similarly, a liberal construction of the notice requirements is favored to avoid penalizing the inexpert layman for some technical defect. *Meredith v City of Melvindale*, 381 Mich 572, 579; 165 NW2d 7 (1969). The principal purposes to be served by requiring notice are to provide the government agency with an opportunity to investigate the claim while the claim is still fresh, and to remedy the defect before other persons are injured. *Hussey v Muskegon Heights*, 36 Mich App 264, 193 NW2d 421 (1971).

Regarding location in this case, although plaintiff's notice did not indicate the street address or the side of the street the incident occurred, the notice did detail that the defect was "on North 13th Street near its intersection with Wayne Street in the City of Niles, County of Berrien,

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[1] There is no dispute that plaintiff provided defendant with written notice of the accident and her injuries within the proscribed 120 days. Plaintiff knew of no witnesses, and defendant did not challenge the notice on that basis below.

State of Michigan," and included color photographs that further illustrated the location of the defect. Notably, the color photographs, taken within two days of the accident, showed the defect in relation to a split rail fence, a driveway and specifically described the location of the defect as the "raised up" portion of the sidewalk slab portrayed in the photographs. There is nothing in the statute precluding the use of photographs to supplement notice. Furthermore, in determining the sufficiency of notice of a claim, the whole notice and all facts stated therein may be used and considered to determine whether the notice reasonably apprises the municipal officer upon whom it is required to be served of place and cause of alleged injury. *Rule v Bay City*, 12 Mich App 503, 507-508; 163 NW2d 254 (1968). Importantly, there is no evidence or claim that defendant had any difficulty locating or discerning the defect.

The photographs also clearly depicted the nature of the defect because the uneven sidewalk slabs are readily evident. Plaintiff also described the defect in writing on the photographs as the "raised up sidewalk slab." Again, there is no evidence defendant had any difficulty locating or discerning the defect. When viewed in its totality, we hold that the written notice in conjunction with the photographs and description provided by plaintiff complied with the requirements of MCL 691.1404.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder